IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7604 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE DIGVIJAY CEMENT CO LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR KEYUR GANDHI for NANAVATI ASSOCIATES for Petitioner(s) : 1,
MR LR PUJARI, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/03/2007

ORAL JUDGMENT

1. Shri Keyur Gandhi, learned counsel for the petitioner, Shri L.R. Pujari, learned AGP for the respondents.

2. By the present writ application, the petitioner seeks to challenge the correctness, validity and propriety of the order passed by the District Development Officer, Jamnagar and Mamlatdar, Jamnagar, whereunder the authorities have held that without due and proper permission from the government or the competent authority, the petitioner has removed minor minerals weighing around 2,10,000 tonnes, valued at Rs. 12,60,000/-.

3. Learned counsel for the petitioner submits that the authorities were unjustified in relying upon the panchnamas which were prepared behind the back of the petitioner. He, however, admits that though the panchas who were present at the time of preparation of the panchnama were not offered for cross-examination, but the Inspector who had prepared the panchnama was offered for cross-examination and he was effectively cross-examined. On being asked that whether any application was made by the petitioner that other witnesses including the panchas be presented or produced for cross-examination, learned counsel for the petitioner fairly conceded that the records present before this Court do not show or suggest that any such application was made. In the opinion of this Court, if the petitioner themselves were satisfied after cross-examining the said Inspector and did not insist upon calling other panch for their cross-examination, then at this

stage, it cannot be said that the authorities were unjustified in relying upon the panchnama or statement of the Inspector.

4. It was next contended that there is no evidence on the records that the petitioner had removed the said minor mineral from the land in dispute. In the opinion of this Court, when two authorities have come to the conclusion that the petitioners have removed minerals, then it would not be proper for this Court to reappreciate the evidence and come to a different finding. Even otherwise, from the findings recorded by the authorities, it would clearly appear that the said Inspector had clearly stated that the minerals were removed. It was then contended that the respondents entered into guesswork and came to an abnormal figure of 2,10,000 tonnes. On being asked that what was the defence of the present petitioner, whether they had removed minerals or not, learned counsel for the petitioner submitted that their case was that no minerals were removed by them. In a case where a party which has personal knowledge of the fact, denies the fact and the authority which has to decide the fact is left with guesswork only, then the possibility of a little wrong either in favour of the revenue or in favour of the assessee cannot be ruled out. However, in absence of the positive proof from the side of the petitioner that what quantity was removed by them, it would not be possible for them to say

that nothing was removed specially in view of the findings that they did remove the minerals. In cases like this, one has to enter into guesswork and if such figures are not shown to be exorbitant then such figures will have to be accepted. I am unable to hold that figures arrived at by the authority suffer with the vice of excessiveness.

5. It was then contended that the minerals which were alleged to be removed from the spot would not fall within the mischief of Section 43 of the Mines and Minerals [Development and Regulation] Act, 1957 and under the circumstances, whole exercise of the State Government and its authorities was bad. Section 43 of the Act provides as under:-

> "43. Any person who shall unauthorisedly fell and appropriate any tree or any portion thereof or remove [from his holding] any other natural product [whether of the like description or not] which is the property of the Government, shall be liable to the Government for the value thereof, which shall recoverable from him as an arrear of land revenue, in addition to any penalty to which he may be liable to under the provisions of this Act for the occupation of the land or otherwise: and notwithstanding any criminal proceeding which may be instituted against him in respect of his

said appropriation of Government property.

The decision of the Collector as to the value of any such tree, or portion thereof, or other natural product, shall be conclusive."

6. Very language of Section-43 provides that if any person removes any natural product whether of like description or not, which is the property of the government without authority, then he shall be liable to pay value to the government. Section-43 does not talk of the minerals only, it talks of everything which is the property of the government. It would be trite to say that any land owner has the right to use and enjoy the land, but he cannot convert his land into mine without permission of the authority.
7. I find no reason to interfere. The petition deserves and is accordingly dismissed. Rule is discharged. No costs. Interim relief, if any is vacated.

[R.S. GARG, J.]

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